United Nations CAT/C/NLD/CO/5-6/Add.1

# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Committee against Torture**

## Concluding observations on the fifth and sixth periodic reports of the Netherlands

**Addendum**

## Information received from the Netherlands on follow-up to the concluding observations*

[Date received: 31 July 2014]

1. The Committee against Torture considered the fifth and sixth periodic reports of the Kingdom of the Netherlands (CAT/C/NLD/5-6) at its 1144th and 1147th meetings, held on 14 and 15 May 2013 (CAT/C/SR/1144 and 1147), and adopted its concluding observations at its 1163rd meeting on 28 May 2013 (CAT/C/SR/1163).

2. In paragraph 35 of its concluding observations, the Committee asked the State party to provide, by 31 May 2014, follow-up information in response to the recommendations of the Committee relating to (a) ensuring or strengthening the right of access to a lawyer for persons in police custody; (b) conducting prompt, impartial and effective investigations into allegations of torture and ill-treatment in detention facilities; and (c) statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as expressed in paragraphs 10, 23, and 30 of its concluding observations. In addition, the Committee requested follow-up information on (d) the detention of asylum seekers and foreigners based on migration law and (e) forced internment in mental health care facilities, including "providing remedies and redress to the victims", as expressed in paragraphs 14-17 and 21 of its concluding observations.

3. In this document, the Kingdom of the Netherlands provides the requested follow-up information. It also provides information in response to recommendation 22, relating to the information provided in response to recommendation 23. In response to each recommendation, information is provided for one or more of the four constituent parts of the Kingdom, depending on the information requested in the recommendation concerned.

* The present document is being issued without formal editing.



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## The right of access to a lawyer for persons in police custody (recommendation 10)

4. In November 2013 the European directive on the right of access to a lawyer (Directive 2013/48/EU) entered into force. This directive must be implemented in the legislation of the EU Member States by November 2016 at the latest. The Netherlands took steps to implement the directive by submitting the draft implementing legislation to the usual advisory bodies for their recommendations in February 2014. This draft legislation replaces the earlier Dutch draft legislation that is mentioned in the recommendations of the Committee.

5. The new draft implementation legislation proposes incorporating into the Code of Criminal Procedure the right of suspects to consult a lawyer before being questioned by the police for the first time ("consultation assistance") and to be assisted by a lawyer while being questioned by the police ("interview assistance"). This right applies to all suspects, whether or not they have been deprived of their liberty. What is more, it applies to all criminal offences. In line with — and as explicitly permitted by — the directive, neither kind of assistance can be refused except in two well-defined cases: namely, when refusal is justified by the urgent need to avert serious adverse consequences for a person's life, liberty or physical integrity, or to prevent substantial jeopardy to the investigation.

6. Until the draft implementation legislation is enacted and enters into force, what applies in the Netherlands — on the basis of Supreme Court case law and the Instructions on Legal Assistance and Police Questioning ("Aanwijzing rechtsbijstand politieverhoor") of the Board of Procurators General of the Public Prosecution Service — is the right to consultation assistance for all suspects who have been arrested and the right to interview assistance for all minors who have been arrested as suspects. The Supreme Court confirmed these rights in a recent judgment.[1]

7. In Aruba, a new revision of the Police Order on Detainees in February 2012 incorporates the legally prescribed hours of access to a duty lawyer. The Order now also complies with the Salduz ruling of the European Court of Human Rights, which guarantees the right of consultation with a lawyer even before the first police interview. Lawyers are not yet allowed to be present during a police interrogation, with the exception of the interrogation of minors.

8. In the other parts of the Kingdom, legislation is under preparation to revise the rights to consultation and interview assistance.

9. Access to complaint mechanisms in detention facilities and prompt, independent and thorough investigations of allegations of ill-treatment or torture in detention facilities; independent, impartial and effective investigations of inter- prisoner violence in Aruba and Curaçao (recommendations 22 and 23.

### The Netherlands

10. The governor of a custodial institution is responsible for informing prisoners about the institution's rules and the possibility for prisoners to lodge complaints.[2] In practice, the governor does so as part of the intake procedure and by disseminating the prison rules. Explaining the complaints procedure is a standard part of the prison rules and provision is

[1] The ECLI code for this judgment (in Dutch only) is ECLI:N:HR:2014:770.

[2] Custodial Institutions Act, Section 56, subsection 1: "The governor is responsible for ensuring that the prisoner is apprised of his rights and obligations by or pursuant to this Act, in writing and as far as possible in a language he understands, upon entering the institution".

made for this by ministerial order.[3] The prison rules are available in each of the institution's cells or wings and in the library, frequently in several commonly used foreign languages. At the bottom of each written decision issued on the basis of sections 51 and 52 of the Custodial Institutions Act is a clause referring to the right of complaint.

11. In the event of any suspected misconduct by a staff member, the governor can enlist the services of the independent Integrity Bureau of the Custodial Institutions Agency. The Integrity Bureau conducts exploratory, factual and disciplinary investigations of breaches of integrity standards on the basis of which the competent authorities may, where appropriate, lodge a criminal complaint with the Public Prosecution Service. As a rule, staff who are under investigation are suspended from their duties, but this depends on the specific facts of the case and any action taken must be compatible with the official's individual legal status.

12. It is the responsibility of the Inspectorate of the Ministry of Security and Justice (hereafter: the Inspectorate) to check whether prisoners are in practice able to submit complaints. The Inspectorate performs these checks by asking prisoners during evaluations whether they have been informed about the complaints procedure and whether they know about the Supervisory Committee that is responsible for dealing with complaints. The Inspectorate also speaks to members of the Supervisory Committee and checks whether complaints submitted by prisoners have been processed within the set period, as well as checking whether the prison rules contain up-to-date information about the complaints procedure.

13. The Inspectorate monitors the treatment of prisoners within its regular inspection framework. If it receives systematic reports of misconduct by staff (a circumstance that has not arisen to date) it can conduct an independent investigation. If its investigation reveals that misconduct has taken place, it will inform the competent authorities, which can call on the aforementioned Integrity Bureau of the Custodial Institutions Agency to conduct a further investigation. The power to launch a criminal investigation lies with the Public Prosecution Service.

**Aruba**

14. Like any other individual, a prisoner who has been the victim of a violent crime can report the matter to the police. To facilitate this, a special procedure exists ensuring prisoners can contact the police. If criminal proceedings are initiated, the prisoner can join these as an injured party. To do so, the prisoner must prove that he/she has suffered damage as a result of the offence; a causal link must exist between the criminal offence and the damage suffered. The criminal court determines whether to award the damages claimed by the prisoner.

15. In addition, a new procedure concerning damages has been incorporated into the new Criminal Code. Under this procedure, a court that convicts someone of a criminal offence may impose an obligation on the convicted person *ex proprio motu* to pay a sum of money as compensation for the victim. The court may impose this non-punitive order insofar as the defendant is liable under civil law for the damage caused to the victim by the criminal offence. The court may also order detention as an extra incentive to make the payment, with the debt remaining on record until it has been paid in full. The Public Prosecution Service is responsible for implementing this non-punitive order.

16. Prisoners are also entitled to complain to the Prison Supervisory Board about limitations of their rights and about violations of their rights. This includes the mention of

[3] 1998 Order establishing the model prison rules for custodial institutions, with the exception of Vught High Security Prison.

any ill treatment by another prisoner or prison staff. The Board acts in this respect as a complaints court that is independent of the criminal justice authorities and its pronouncements are binding on the prison administration. The chairman of the Prison Supervisory Board is a judge of the Joint Court of Justice of Aruba, Curacao, Sint Maarten and of Bonaire, Sint Eustatius and Saba.

17. According to article 6, paragraph 2 of the country decree establishing the prison and remand centre supervisory board ("Landsbesluit Commissie van Toezicht strafgevangenis en Huis van Bewaring"), a complaint can be lodged with the social worker of the Facility or directly with the Prison Supervisory Board.

18. It should further be noted here that without prejudice to the rights of the prisoner/victim to lodge a complaint, the director of the Aruban Correctional Institution draws up an official report of any criminal offences that have been committed, which is then brought to the attention of the Public Prosecution Service and the Minister of Justice.

19. As far as violence between prisoners is concerned, reference may be made to article 77 of the Prisons Decree (A.B. 2000, no. GT 2):

> Any criminal offence committed by prisoners is recorded by the director of the institution in the form of an official report and communicated to the Public Prosecution Service and the Minister of Justice and Public Works.

20. In 2013 the director of the Aruban Correctional Institution was unable to comply with the above article, since the necessary investigative powers had not yet been vested in him. He nonetheless made a written record of all criminal offences that had been committed and sent it to the Public Prosecution Service and the Minister of Justice. Since then, the necessary investigative powers have been vested in the director. Between 1 January and 31 October 2013, there were 28 violent incidents between prisoners, which were recorded in writing by the director of the Institution.

21. The victims did not avail themselves of their right to lodge a criminal complaint or to claim compensation. In these cases involving violence among prisoners, disciplinary punishments were imposed. The handbook "Sanctions policy as applicable to detainees' ("Sanctiebeleid ten behoeve van gedetineerden") of 10 April 2010 includes a list of penalties. Each prisoner is issued with a copy of this handbook upon entering the Aruban Correctional Institution.

22. The following disciplinary punishments may be imposed: (a) confinement to a punishment cell; (b) confinement to the person's own cell; (c) a fine; (d) deprivation of the right to work; and (e) a reprimand.

23. Confinement to a cell initially applies for a period not exceeding fourteen days. In the event of a further offence within a period of six months, it may be imposed as a disciplinary punishment for a period of up to 30 days.

24. The following table gives a brief overview of violent incidents between prisoners in the period from 1 January 2013 to 31 October 2013 and the disciplinary punishments that were imposed.

Table 1

| | *Date* | *No. of incidents* | *Disciplinary measure* |
|---|---|---|---|
| **January 2013** | | | |
| Fighting | 22/01 | 1 | 21 days' confinement to punishment cell |
| Fighting with a stabbing | 18/01 | 2 | 20 days' confinement to the person's own |

| | *Date* | *No. of incidents* | *Disciplinary measure* |
|---|---|---|---|
| weapon | | | cell (in both cases) |
| Fighting in association with one or more others | 10/01 | 2 | 7 days' confinement to punishment cell (in both cases) |
| Fighting in association with one or more others | 09/01 | 1 | 14 days' confinement to punishment cell |
| **February 2013** | | | |
| No incidents | --- | --- | --- |
| **March 2013** | | | |
| Fighting | 21/03 | 1 | 21 days' confinement to the person's own cell |
| **April 2013** | | | |
| Fighting | 19/04 | 4 | In 1 case: 7 days' confinement to punishment cell.<br>In the other 3 cases: 7 days' confinement to punishment cell, suspended with an operational period of 3 months. |
| Fighting | 07/04 | 1 | 14 days' confinement to the person's own cell |
| **May 2013** | | | |
| Fighting | 11/05 | 1 | 14 days' confinement to punishment cell |
| Fighting, resulting in injury | 06/05 | 1 | 14 days' confinement to the person's own cell |
| **June 2013** | | | |
| Fighting | 15/06 | 2 | 1 x 7 days' confinement to the person's own cell: and<br>1 x 7 days' confinement to punishment cell |
| Fighting in association with one or more others | 14/06 | 3 | 1 x 28 days' confinement to punishment cell; and<br>2 x 14 days' confinement to punishment cell |
| **July 2013** | | | |
| No incidents | --- | --- | --- |
| **August 2013** | | | |
| Fighting | 30/08 | 1 | 7 days' confinement to punishment cell |
| Fighting | 05/08 | 2 | 21 days' confinement to punishment cell |
| **September 2013** | | | |
| Fighting | 22/09 | 1 | 14 days' confinement to punishment cell |
| Fighting | 13/09 | 1 | 28 days' confinement to punishment cell |
| Fighting | 08/09 | 1 | 7 days' confinement to punishment cell |
| Fighting | 03/09 | 1 | 21 days' confinement to the person's own cell |
| Fighting | 01/09 | 2 | 14 days' confinement to punishment cell (in both cases) |
| **October 2013** | | | |
| No incidents | --- | --- | --- |

**Curaçao**

25. There was a major review of the prisoners' complaints procedure at the Curaçao Detention and Correction Centre in 2014. On 12 March 2014, the Council of Ministers created a new department at the Correction Centre, the Internal Relations Bureau, at the request of the Minister of Justice. The Bureau has a staff of three: one former police officer and two prison officers, and will be in charge of the new procedure for filing complaints alleging torture or ill-treatment in the facility. This means that any prisoner can file an official complaint with the Internal Relations Bureau alleging torture or ill-treatment by detention personnel in any category.

26. The main purpose of this new body is to ensure that prisoners are aware of the possibility of filing complaints and that the complaints procedure works as intended, meaning that all complaints are logged correctly and dealt with adequately to prevent the situation becoming more serious or escalating. Complaint forms are freely available to all prisoners. Prisoners are informed of their right to file a complaint during their first conversation with the social worker, but are generally also aware of this right. There are plans to draw attention to this right on signs in custodial institutions, but they have not yet been implemented.

27. After a complaint has been received by the Internal Relations Bureau, the bureau's staff will invite the complainant to explain his complaint further. Following the investigation, the Bureau will make recommendations to the prison management as to how the problem can best be resolved. It may mediate between the parties or take disciplinary action. If the complaint is of a serious or delicate nature, it must be passed on for further investigation. If it involves an alleged criminal offence, the public prosecutor, who is responsible for conducting criminal investigations, can take over the case and may prosecute the alleged offender.

28. Since 1998 prisoners have also had the option of complaining to the Complaints Committee about decisions bearing on them personally, which have been made by or on behalf of the governor. A refusal by the governor to take a decision can also be the subject of a complaint. The governor must ensure that any prisoner wanting to make a complaint is given the opportunity to do so as soon as possible.

29. Police detention centres come under the direct responsibility of the police force. Persons who have been detained in police detention centres are in principle supervised by police officers. Any prisoner in a police detention centre who has allegedly suffered torture or ill-treatment may file a complaint with the police force's Internal Affairs Bureau, which will then be investigated by the detectives at the Internal Affairs Bureau under the supervision of the Public Prosecutor.

30. The Public Prosecutor conducts prompt, impartial and effective investigations into all allegations of torture and ill-treatment, including those alleged to have taken place in detention facilities, immigration detention centres or police detention centres, on the basis of the Country Ordinance implementing the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Official Bulletin 1995, No. 197).

31. The Public Prosecutor considers that police officers and prison guards may be expected to be aware at all times of their use of force. When a prison guard has overstepped the mark and engaged in torture or ill-treatment, which are criminal offences, the Public Prosecutor will respond with criminal prosecution. Given that such actions go to the very heart of the justice system, the Public Prosecutor will not only prosecute the suspects but also consider demanding compensation for the victims to secure justice for them.

32. As already noted, to ensure a prompt, impartial and effective investigation, anyone who considers that he has been subjected to torture or ill-treatment in a detention facility,

including an immigration detention centre, may file a formal complaint. Allegations of this kind are investigated by the Public Service Investigations Agency (*Landsrecherche*) or by the police force's Internal Affairs Bureau under the oversight of the Public Prosecutor.

33. No allegations of torture or ill-treatment by prison guards or police officers in detention facilities were registered in 2013 or in the first three months of 2014. The most recent allegation of ill-treatment by a prison guard in a detention facility dates from 2012.

34. The following investigations of allegations of ill-treatment or torture by public servants were conducted in the period 2009-2013. Most involved incidents in places other than detention centres.

Table 2

| | *Ill-treatment* | *Torture* | ***Total*** |
|---|---|---|---|
| 2013 | 17 | 0 | **17** |
| 2012 | 23 | 2 | **25** |
| 2011 | 15 | 0 | **15** |
| 2010 | 57 | 0 | **57** |
| 2009 | 17 | 0 | **17** |

35. In the past five years there have been only two alleged cases of torture (in 2013). Both cases involved the same three police officers, and the alleged incidents did not take place in a detention centre or prison. The three officers concerned were accused of detaining two different individuals on two separate occasions and torturing them. After an investigation, the officers were charged by the Public Prosecutor under articles 2 and 3 of the Country Ordinance implementing the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and brought to trial. The Court in First Instance convicted them of torture in 2013 and barred them from holding office. This judgment was overturned by the Court of Appeal in 2014, which acquitted the three officers of all charges against them.

36. The last case before this one dates back to 2008, when two police officers were convicted of torture and sentenced to terms of imprisonment. They were also barred from holding office. The Supreme Court upheld the Court of Appeal's judgment.

37. As already noted, there were no recorded cases of ill-treatment by prison guards or police officers inside detention facilities in 2013 or the first three months of 2014. Before 2013, ill-treatment in detention facilities averaged six cases a year.

38. Violence among prisoners remains a problem in Curaçao. As yet, no study has been made of this problem. The prison management is aware, however, that many factors, such as the prisoners' gender and age, the prison environment (architecture and security level) and factors external to the prison may influence violence among prisoners. It has therefore taken the necessary steps to minimize outbursts of all kinds among the prisoners.

39. These measures include:

*Preventing overcrowding*

40. Since overcrowding exacerbates violence between prisoners, the Curaçao Detention and Correction Centre has put in place measures to prevent overcrowding, and to keep the prison population well below the institution's maximum capacity. Pretrial detention contributes to overcrowding, and it is in generally avoided unless there are compelling

reasons for it. The prosecutor examines and evaluates cases to decide whether pretrial detention is warranted or whether the suspect can await trial without being detained.

41. Likewise, the examining magistrate will not order an extension of a suspect's detention unless the prosecutor presents evidence amounting to serious objections — that is, there is more than a mere suspicion linking the suspect to the offence. The examining magistrate must also be convinced that at least one of the following five grounds for keeping the suspect in custody applies:

- There is a risk of the suspect absconding.
- There is a risk of a repeated related offence; in other words, the suspect has been convicted of a similar offence in the recent past and there is a danger of him committing another offence punishable by at least six years' imprisonment.
- It is acknowledged that the offence has caused serious social outrage.
- There is a risk that the suspect may prevent or obstruct the investigation into his case.

42. Pretrial detention may be suspended or terminated if none of the above-mentioned five grounds for keeping the suspect in custody applies. The Public Prosecutor may also choose not to extend the detention.

43. In addition, the examining magistrate frequently decides to suspend or terminate pretrial detention on the grounds of the suspect's personal circumstances (e.g. if the person has a full-time job, his family relies on him for financial support, or if the person is a first-time offender).

44. Besides the suspension or termination of pretrial detention, the prison population is also kept to a minimum by other factors, namely:

- No first-time offender suspected of drug trafficking is placed in pretrial detention.
- In recent years, those who were given prison sentences while in pretrial detention actually served their sentences but many people who were convicted following the suspension or termination of their pretrial detention did not serve their sentences.
- All foreign nationals receive what is known as a "foreigners' pardon", which means that they serve only one-third of their term of imprisonment.
- All local convicted prisoners receive a reduction of their custodial sentence and are released on licence after serving two-thirds of it. Release on licence is governed by article 1:31 of the Criminal Code. The power to grant release on licence lies with the Minister of Justice; only prisoners who are guilty of serious misconduct (such as the ill-treatment of a prison guard) are ineligible.
- A convicted prisoner who qualifies for release on licence may also participate in a special electronic monitoring programme, whereby he is electronically monitored and permitted to return home before being released on licence. While he is subject to this monitoring programme, he is under the supervision of the probation service.

45. Curaçao's prison population (i.e. those detained in the Curaçao Detention and Correction Centre) was as follows in the past five years:

Table 3

| | *Men* | *Women* | *Total* |
|---|---|---|---|
| 2013 | 518 | 127 | **645** |
| 2012 | 554 | 116 | **670** |
| 2011 | 471 | 88 | **559** |
| 2010 | 549 | 136 | **685** |
| 2009 | 520 | 132 | **652** |

*Minimising restrictions*

46. The prison management is well aware that tightening up restrictions, e.g. reducing time for breaks and outdoor exercise, may increase aggression among prisoners, possibly culminating in violence.

47. Prisoners spend most of the day outside their cells and have access to computers, television, and sports and other social activities geared towards preventing any form of dysfunctional control, which is one of the main causes of violence between prisoners.

*Conducting regular cell inspections*

48. Incidents involving violence, whether among prisoners or between prisoners and staff, are very few in number. They generally average six a year, although the last such incident took place in 2012.

49. One reason for the reduction in violence is that regular cell inspections are conducted, during which all prisoners' cells are searched for contraband items such as drugs, weapons, etc.

*Placing prisoners of the same age, gender or background together*

50. The Curaçao Detention and Correction Centre places most prisoners in single or double cells, giving them a considerable degree of privacy in their daily lives.

51. It also separates the sexes: there is one block for women, while the rest are for men. Prisoners may also be grouped together by age (one block is reserved for younger prisoners) and national origin (one block is reserved for all prisoners from South America).

## Data collection (recommendation 30)

52. In response to the concluding observations of the Committee, the Custodial Institutions Agency and the Public Prosecution Service have reviewed the possibility of compiling statistics as recommended in paragraph 30 (b) of the concluding observations, having regard to national data protection legislation. This has resulted in additional information and statistics in relation to complaints, investigations, prosecutions, convictions and penal or disciplinary sanctions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel. However, the Government of The Netherlands reiterates that registration of ethnicity of complainants cannot take place due to national data protection legislation. National data protection legislation protects human rights and the Government therefore does not share the concerns expressed by the Committee in regard to this legislation.

53. The additional information received from the Public Prosecution Service is given below. The Government wishes to emphasize that this form of data collection is relatively new and will need to be refined over time.

**Cases of torture and ill-treatment by law enforcement, security, military and prison personnel**

54. According to the available information as supplied by the Public Prosecution Service, there are no cases in which investigations or prosecutions took place in relation to suspected criminal offences under section 8 of the International Crimes Act. This section incorporates the ban on torture by public servants and other persons working in the service of the authorities into Dutch law, pursuant to the Torture Convention Implementation Act.[4]

55. Persons suspected of torture or ill-treatment within the meaning of the Convention can also be prosecuted on the basis of certain provisions of the Criminal Code, such as article 302 (the intentional infliction of serious bodily injury). There are no indications that any such case has occurred. Insofar as any prosecution of this kind may have taken place, it should be noted that criminal cases are not registered in such a way that any specific data about such cases can be obtained. When criminal cases are registered, no record is kept of the particular government service that employs the suspect. Soldiers are an exception to this rule, because criminal cases against soldiers are heard exclusively by the military chamber of Gelderland District Court. However, even in the case of soldiers, the details registered include only the particular provision of criminal law under which the charge is brought (e.g. art. 302 of the Criminal Code) and not whether the alleged violation of that article could be classified as "torture or ill-treatment" within the meaning of the Convention.

56. The National Police Internal Investigations Department plays a key role in investigations into the use of force by the police. This department investigates alleged criminal offences committed by public servants, including police officers. To maintain impartiality and distance in investigations of police officers, the National Police Internal Investigations Department operates under the authority of the Public Prosecution Service rather than the police.

57. The National Police Internal Investigations Department is always asked to investigate when the use of firearms by the police has resulted in death or bodily injury. In addition, when a confrontation between a member of the public and the police leads to death or serious bodily injury in any other way, the National Police Internal Investigations Department will in principle always conduct an investigation.[5] This includes all ways in which injuries may be caused, such as by the use of a truncheon or during a scuffle at the time of arrest, as well as injury caused by a police vehicle in a traffic accident.

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[4] Section 8 of the International Crimes Act stated (on 1 May 2014):

1. Torture committed by a public servant or other person working in the service of the authorities in the course of his duties shall carry a sentence of life imprisonment or a term of imprisonment not exceeding twenty years or a fifth category fine.

2. The following shall be liable to similar sentences:

(a) a public servant or other person working in the service of the authorities who, in the course of his duties and by one of the means referred to in Article 47, paragraph 1 (ii), of the Criminal Code, solicits the commission of torture or intentionally permits another person to commit torture;

(b) a person who commits torture, if this has been solicited or intentionally permitted by a public servant or another person working in the service of the authorities, in the course of his duties and by one of the means referred to in article 47 paragraph 1 (ii), of the Criminal Code.

[5] Instructions on the tasks and deployment of the National Police Internal Investigations Department (2010A033), adopted by the Board of Procurators General on 13 December 2010.

58. In 2013 the National Police Internal Investigations Department investigated 33 shooting incidents in which police officers had used firearms in the exercise of their duties. In these shooting incidents, 31 people were injured and two killed.[6] In 2012 there were 25 shooting incidents with 22 persons injured and five killed. In 2011, 30 shooting incidents were investigated, in which 29 people had been injured and five killed.

59. No recent figures are available on the category "bodily injury as a result of a confrontation with police, other than by the use of firearms". It is known, however, that the National Police Internal Investigations Department investigated an average of twelve cases a year in this category between 2006 and 2010.[7]

60. The Public Prosecution Service decides on the basis of the findings of the investigation by the National Police Internal Investigations Department if it is appropriate to prosecute a police officer for the use of force, whether by the use of a firearm or by some other means. Although no exact figures are available, it can be stated as a general rule that the decision to prosecute is taken only in those cases in which the use of force is deemed to have been unjustified.

61. Victims and surviving relatives who object to a decision not to prosecute can complain to a court of appeal, which then considers whether there should have been a prosecution. If it rules that prosecution should have taken place, it will order the Public Prosecution Service to prosecute the person concerned.[8]

62. If the Public Prosecution Service decides that prosecution is appropriate, the criminal court will be asked to consider the use of force. Recent case law shows that proceedings of this kind may lead to a conviction,[9] an acquittal,[10] or discharge from prosecution on a point of law.[11] It should be emphasized that these prosecutions of police officers have not included any cases in which the charges could be regarded as "torture or ill-treatment" within the meaning of the Convention.

**Sexual violence**

63. The following table gives the figures for sex crimes involving an element of force as registered with the Public Prosecution Service and the disposal of these cases by the latter and by the courts in the period 2010-2013. Cases are classified according to the article of the Criminal Code under which charges were brought (first column).

[6] Press release, National Police Internal Investigations Department, 18 February 2014.

[7] Annual Report of the Public Prosecutions Service for 2010.

[8] A recent example in which a court of appeal ordered the prosecution of a police officer who had caused injury by discharging a firearm was the judgment of Den Bosch Court of Appeal of 18 March 2014, ECLI:NL:GHSHE:2014:783.

[9] Such as Eastern Netherlands District Court judgment of 28 February 2013, ECLI:NL:RBONE:2013:BZ2711.

[10] Such as The Hague District Court judgment of 23 December 2013, ECLI:NL:RBDHA:2013:18257.

[11] Such as Middelburg District Court judgment of 23 February 2012, ECLI:RBMID:2012: BV6782.

Table 4

**Cases registered with the Public Prosecution Service**

| *Year* | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| 242[12] | 512 | 543 | 492 | 579 |
| 243[13] | 41 | 48 | 62 | 56 |
| 244[14] | 200 | 202 | 213 | 210 |
| 245[15] | 214 | 200 | 216 | 217 |
| 246[16] | 696 | 657 | 596 | 665 |
| 247[17] | 247 | 287 | 305 | 342 |
| 249[18] | 143 | 188 | 186 | 226 |
| 248a[19] | 24 | 35 | 37 | 27 |
| 248b[20] | | 2 | 7 | 13 |
| 248d[21] | 5 | 10 | 17 | 27 |
| 248e[22] | 4 | 13 | 13 | 13 |
| **Total** | **2 086** | **2 185** | **2 144** | **2 377** |

Table 5

**Disposal by Public Prosecution Service**

| | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| 242[23] | 498 | 527 | 517 | 573 |
| 243 | 46 | 49 | 50 | 59 |
| 244 | 191 | 204 | 221 | 220 |
| 245 | 191 | 199 | 214 | 218 |
| 246 | 645 | 682 | 611 | 656 |

[12] Article 242 of the Criminal Code (rape).

[13] Article 243 of the Criminal Code (sexual penetration of a person who is unconscious, powerless or suffering from mental incapacity).

[14] Article 244 of the Criminal Code (sexual penetration of someone under twelve years of age).

[15] Article 245 of the Criminal Code (sexual penetration of someone under sixteen years of age).

[16] Article 246 of the Criminal Code (sexual assault; the use of violence or the threat of violence to compel another person to commit an indecent act).

[17] Article 247 of the Criminal Code or submit to (sexual abuse of a person who is unconscious, powerless, or suffering from mental incapacity, or of a child).

[18] Article 249 of the Criminal Code (sexual abuse involving the abuse of power/authority).

[19] Article 248a of the Criminal Code (seduction of a minor, by inducing him to commit or submit to an indecent act by offering or promising a gift of money or property, or by misusing authority or influence derived from the actual state of affairs, or by means of deception).

[20] Article 248b of the Criminal Code (youth prostitution: performing indecent acts with a minor aged 16 or 17 who is offering himself or herself as a prostitute).

[21] Article 248d of the Criminal Code (sexual corruption: inducing someone under sixteen years of age to witness sexual acts).

[22] Article 248e of the Criminal Code (grooming).

[23] See the footnotes to the previous table (Cases registered with the Public Prosecution Service) for descriptions of the offences concerned.

| | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| 247 | 228 | 261 | 319 | 311 |
| 249 | 129 | 174 | 201 | 208 |
| 248a | 21 | 33 | 32 | 34 |
| 248b | - | 3 | 5 | 10 |
| 248d | 2 | 6 | 14 | 26 |
| 248e | 1 | 10 | 9 | 10 |
| **Total** | **1 952** | **2 148** | **2 193** | **2 325** |

Table 6
**Disposal by the courts**

| | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| 242[24] | 275 | 213 | 231 | 203 |
| 243 | 37 | 29 | 22 | 19 |
| 244 | 129 | 114 | 133 | 117 |
| 245 | 136 | 128 | 128 | 144 |
| 246 | 353 | 304 | 259 | 238 |
| 247 | 130 | 127 | 146 | 129 |
| 249 | 58 | 53 | 47 | 50 |
| 248a | 20 | 16 | 16 | 15 |
| 248b | 2 | 1 | - | 3 |
| 248d | - | 5 | 3 | 10 |
| 248e | 1 | 6 | 4 | 4 |
| **Total** | **1 141** | **996** | **989** | **932** |

**Domestic violence**

Table 7
**Domestic violence cases registered with the Public Prosecution Service (OM)**

| *Period* | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| Registered with OM | 11 232 | 11 739 | 11 835 | 11 015 |
| Disposed of by OM | 11 266 | 11 150 | 11 820 | 12 000 |
| Disposed of by courts | 7 677 | 7 125 | 6 791 | 6 462 |

64. No specific information is available at present regarding the nature of these cases, the manner of disposal, or the characteristics of the suspects and victims. However, more detailed information is available regarding cases of domestic violence registered with the police in 2010, 2011 and 2012.

[24] See the footnotes to the table "Cases registered with the Public Prosecution Service" for descriptions of the offences concerned.

65. This information[25] relates to incidents brought to the notice of the police. These figures are much higher than the number of cases in which the victim actually decided to lodge a criminal complaint and which were forwarded by the police to the Public Prosecution Service.

Table 8

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Registered incidents | 97 181 | 91 869 | 95 541 |
| Criminal complaint processed | 24 237 | 24 950 | 25 769 |
| Suspect questioned | 22 189 | 21 273 | 21 677 |
| Suspect arrested | 15 911 | 15 113 | 14 980 |
| Suspect remanded in police custody | 8 115 | 7 750 | 7 818 |
| Suspect brought before Public Prosecutor/ examining magistrate | 1 286 | 1 128 | 1 084 |
| Forwarded to OM[26] | 10 025 | 10 165 | 10 864 |

Table 9

**Percentage breakdown of domestic violence cases that have come to the attention of the police by the kind of criminal offence involved**

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Threatening behaviour | 12.3 | 11.4 | 11.6 |
| Stalking | 2.9 | 4.5 | 4.3 |
| Physical violence | 25.8 | 24.2 | 23.0 |
| Psychological violence | 55.1 | 56.2 | 57.5 |
| Sexual violence | 3.9 | 3.7 | 3.6 |
| **Total** | **100.00** | **100.00** | **100.00** |

Table 10

**Percentage breakdown of victims, witnesses and suspects in the period studied by gender**

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Victims | | | |
| Women | 75.2 | 75.2 | 75.5 |
| Men | 24.8 | 24.8 | 24.5 |

[25] The following information derives from the report Kijk, dan zie je het! Huiselijk geweld geteld en verdiept: Cijfers 2010 t/m 2012 ("Look and you'll see! Figures and details of domestic violence cases, 2010 to 2012"), commissioned by the police in 2013 and drawn up by Bureau Beke.

[26] As a result of differences in definitions and times of measurement, there are minor discrepancies between these figures for cases registered in 2010, 2011 2012 and the figures cited above.

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Witnesses | | | |
| Women | 50.0 | 50.4 | 50.3 |
| Men | 50.0 | 49.6 | 49.7 |
| Suspects | | | |
| Women | 8.7 | 9.0 | 8.7 |
| Men | 91.3 | 91.0 | 91.3 |

Table 11
**Percentage breakdown of victims by age**

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Victims | | | |
| 0 to 5 years | 3.7 | 3.5 | 3.2 |
| 6 to 11 years | 4.5 | 4.1 | 3.9 |
| 12 to 17 years | 9.1 | 8.3 | 8.2 |
| 18 to 24 years | 17.4 | 18.2 | 17.6 |
| 25 to 34 years | 22.4 | 23.3 | 24.0 |
| 35 to 44 years | 21.5 | 20.9 | 21.2 |
| 45 to 54 years | 14.1 | 14.4 | 14.3 |
| 55 to 65 years | 5.2 | 5.3 | 5.5 |
| 66 years and older | 2.1 | 2.0 | 2.1 |

Table 12
**Percentage breakdown of suspects by age**

| *Period* | *2010* | *2011* | *2012* |
|---|---|---|---|
| Suspects | | | |
| 0 to 5 years | 0.0 | 0.0 | 0.0 |
| 6 to 11 years | 0.1 | 0.0 | 0.0 |
| 12 to 17 years | 5.3 | 5.0 | 4.5 |
| 18 to 24 years | 19.3 | 19.3 | 19.1 |
| 25 to 34 years | 27.8 | 28.2 | 28.8 |
| 35 to 44 years | 26.8 | 26.2 | 25.5 |
| 45 to 54 years | 15.5 | 15.7 | 16.1 |
| 55 to 65 years | 4.2 | 4.5 | 4.8 |
| 66 years and older | 1.1 | 1.1 | 1.2 |

**Racially-motivated Crimes**

**(a) Discrimination**

66. Discrimination cases registered with the Public Prosecution Service (OM) and those disposed of either by the latter or by the courts:

Table 13

| *Period* | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|
| Registered with OM | 154 | 162 | 107 | 87 |
| Disposed of by OM | 143 | 159 | 124 | 88 |
| Disposed of by courts | 109 | 68 | 78 | 49 |

67. No detailed information is available at present concerning the nature or disposal of the discrimination cases registered with the Public Prosecution Service in 2013.[27] The following is known, however, regarding offences registered in 2012.[28]

68. In total, 52 per cent of new discrimination offences were brought before the court. In respect of 13 per cent of offences, the Public Prosecution Service decided to impose a settlement penalty. In respect of 25 per cent of discrimination offences, it made an unconditional decision not to prosecute, and in respect of 4 per cent of offences a conditional decision not to prosecute. In respect of 6 per cent of the offences registered in 2012, the decision on whether to prosecute had not yet been taken by the end of 2013. As in previous years, the majority (75 per cent) of new discrimination offences registered with the Public Prosecution Service concerned violations of article 137c of the Criminal Code, i.e. expressing views insulting to a group of persons on account of one of the stated grounds for discrimination. Most of these cases in 2012 involved verbal insults (63 per cent). The largest group of offences (31 per cent) registered with the Public Prosecution Service in 2012 took place in the street or in a public place. In second place (at 18 per cent) were offences related to sports, most of which involved anti-Semitic slogans chanted at a football match. In total, 17 per cent of offences took place in the immediate vicinity of the home.

69. Of all the grounds for criminal discrimination, race was cited the most frequently in 2012, as in previous years, accounting for 41 per cent of grounds cited. In the records of the Public Prosecution Service, "race" as grounds for discrimination is divided into skin colour and national/ethnic origin, so as to get a better picture of which groups are most affected, and to what extent. This means that the ground "race" embraces a variety of groups that suffer from discrimination. Jewish people were the most frequent target of discrimination (28 per cent).[29] In second place were persons of non-Dutch ethnicity/foreigners (13 per cent). In third place came people of colour (11 per cent). After discrimination on the grounds of race came discrimination on the grounds of homosexual orientation, at 13 per cent. Religion/belief accounted for 7 per cent of the total grounds cited. As in previous years, the vast majority of suspects were white individuals (74 per cent) and male (90 per cent).

### (b) Other racially-motivated criminal offences

70. The above data relate to discrimination offences as defined in articles 137c to 137g and article 429 quater of the Criminal Code.

[27] A discrimination offence is a criminal offence as defined in articles 137c to 137g or 429 quater of the Criminal Code. A single discrimination case against a suspect may involve several different charges.

[28] The information in the following passage is taken from the 2013 Progress Report on Discrimination, sent by the Minister of the Interior and Kingdom Relations, the Minister of Security and Justice and the Minister of Social Affairs and Employment to the House of Representatives on 23 December 2013.

[29] This includes cases involving anti-Semitic insults that as such targeted Jewish people, but which were directed in the specific cases concerned against people who were not Jewish.

71. However, the category "racially-motivated crimes" also includes ordinary crimes that have been committed with racist or discriminatory intent. These may include assault (art. 300 of the Criminal Code), threatening behaviour (art. 285 of the Criminal Code), criminal damage (art. 350 of the Criminal Code) and arson (art. 157 of the Criminal Code). The Public Prosecution Service does not presently keep records of whether any racist or discriminatory factors are involved in offences of this kind. It will start doing so in 2015, however.

72. The police, however, have been registering the presence of discriminatory factors in respect of criminal offences since 2008. Of the 3,292 incidents related to discrimination that were registered by police forces in 2012, 1,518 involved insults, 624 involved criminal damage, 438 involved assault, and 373 involved threatening behaviour.[30]

**Statistics on the prison population**

73. The general statistics compiled by the Custodial Institutions Agency regarding the prison population are given in Annexe 1. Please note that although no data are collected based on ethnicity, a break-down of the prison population based on country of birth has been provided.

## Aliens detention (recommendations 14-17)

**Legal regime of aliens detention and alternatives to aliens detention (paras. 14 and 16 of the concluding observations)**

74. In response to the recommendations of the Committee in paragraphs 14 and 16 of the concluding observations, the Dutch Government wishes once again to emphasize that aliens detention is used only as a last resort. The possibility of adopting a less stringent instrument is always considered. Only if this proves impossible is aliens detention used.

75. The Minister for Immigration has stated that the number of places reserved for aliens detention will be reduced from almost 2,500 to fewer than 1,000.

76. In addition, a legislative amendment that entered a process of online consultation at the end of 2013 will introduce a separate framework for aliens detention under administrative law, placing even more emphasis on its nature as a measure adopted under administrative law, not criminal law. It will also emphasize even more that it is an instrument of last resort. Vulnerable groups will receive special attention. It is expected that the Bill will be introduced in the House of Representatives at the beginning of 2015.

77. Four pilot schemes were launched to trial alternatives to aliens detention in 2012: (a) the imposition of an obligation to report to the authorities, accompanied by return counselling by the Repatriation and Departure Service (DT&V); (b) the collection of a guarantee in the form of payment of a deposit, accompanied by return counselling by the DT&V; (c) restrictive accommodation for certain groups of unaccompanied alien minors; and (d) co-financing of return projects run by non-governmental organizations. By letter of 13 September 2013, the State Secretary for Security and Justice informed the House of Representatives of the results of these pilot projects. Strict conditions were attached to participation in these trials: for instance, persons who had previously evaded supervision or who had a criminal record were excluded. Although a relatively small number of aliens used one or other of these alternatives, the results were so good that it was decided to

[30] See POLDIS report for 2012 (in Dutch), page 19 (www.verwey-jonker.nl/vitaliteit/publicaties/recht/poldis_rapportage_2012).

embed these pilot projects in policy. The police and DT&V will offer every alien who works actively on his return an alternative supervisory measure, based on his individual circumstances, to enable him to focus on preparing for his departure.

78. In addition, €1 million will be made available for providing grants to non-governmental organizations that run local return projects.

79. More specifically with regard to asylum seekers arriving at Amsterdam Schiphol Airport, the Government would note as follows. If asylum seekers arriving at Schiphol Airport are refused entry to the Netherlands, they are detained for this reason. Unaccompanied minors are never detained on these grounds, but are instead sent to an open reception centre. Asylum seekers are released from detention as soon as possible, with most being sent to open reception centres. Families with minor children may not be detained for more than eight days. Others may be detained for more than eight days (the duration of the asylum procedure) if there are grounds for further investigation. These grounds are confined to fraud, the abuse of asylum procedures, the applicability of article 1 (f) of the Convention relating to the Status of Refugees, and the expectation that an alien will be transferred to another Dublin country. In 2012, it was decided in 50 out of the 620 asylum claims at the border that further investigation was needed, and the period of detention was therefore extended. In these 50 cases, the average duration of the procedure in detention was 39 days.

80. What is more, since the entry into force of the amended Dublin Regulation on 1 January 2013, Dublin claimants have only been placed in detention for an extended period during the asylum procedure if there is a significant risk of their evading supervision.

81. The wording of paragraph 14 of the concluding observations suggests a causal link between the fact that the asylum seeker concerned was being held in aliens detention and his suicide. A report drawn up by the independent inspectorate concluded, however, that no such causal link can be deduced.

82. Finally, the Government wishes to comment on the applicable regime of aliens detention as described in paragraph 16 of the concluding observations:

- *Hours of confinement in cell*: In the aforementioned draft legislation, which will introduce a new regime for aliens detention under administrative law, the number of hours during which aliens are not confined to their rooms will be increased. Under the current proposal, aliens will be able to leave their rooms between 08:00 and 22:00, with the exception of two one-hour periods of confinement within this period. These two hours are essential for operational purposes, e.g. shift changes and hand-overs, team consultations, hours needed for the personnel to take breaks and do certain tasks, and other activities that require a deviation from routine (such as repairs and maintenance work). Essentially, this means that aliens will be able to leave their cells for twelve hours each day. It is already the case that families with children being held in aliens detention and aliens being held in border detention are confined to their cells from approximately 21:00.

- *Absence of day activities*: The purpose of aliens detention is to ensure that the alien can be removed from the country in cases in which the use of less drastic measures is impossible. Elements geared towards resocialization in the Netherlands, such as offering paid employment, education or regular leave of absence are at odds with the nature of the measure. What is more, such forms of resocialization are geared towards criminals in detention. The Netherlands Government would point out that aliens detention should emphatically not be placed in the same category as punitive detention of this kind. The centres do provide other kinds of daytime activities, such as sports and gym facilities, creative activities, music, access to the library, and to computers with limited internet access to approved sites, opportunities to go out into

the open air, opportunities to receive visitors, and pastoral care. Unaccompanied alien minors are placed in detention only in exceptional circumstances and are offered education and recreational activities appropriate to their age.

83. Under the draft legislation, a total of at least forty hours a week will in principle be allocated to these activities.

- *Use of isolation cells*: The powers granted to staff to place an alien in isolation (in certain cases with the use of camera surveillance, physical restraints and at a different location) are necessary for the preservation of order and security at the institution. Incidents that have occurred during border detention have demonstrated that, in certain circumstances, it may for instance be necessary to use force, to protect the alien himself, other aliens in the institution, or the personnel. There is nothing surprising about this, unfortunately. Many of those placed in aliens detention are aliens who have been arrested after they have been living in the Netherlands illegally, in some cases for a long time. This includes aliens who have failed to leave the country after going through an asylum procedure and who have declined to participate in ways of leaving the Netherlands of their own accord. The prospect of being compelled to return to their country of origin leads some to become recalcitrant and unruly. In the interests of preserving order and security, it may sometimes be unavoidable in such cases to apply drastic control measures, notwithstanding all the efforts of the institution's staff to resolve the situation in consultation with the alien concerned. An alien will only be confined to an isolation cell in the event that other, less drastic, measures have proved ineffective. These other measures may include a talk with the management, exclusion from certain daytime activities, or a "time out" period in the person's own room. No alien will be placed in an isolation cell for the sole reason that he is on hunger strike, unless he is considered to be a danger to himself and it is necessary to monitor him continuously (for instance where there is a risk of suicide). In a case of this kind, the alien will be confined to a furnished isolation area or an ordinary room (but separated from others). The advice given to the governor by a behavioural expert or the institution's own physician is the key factor in making such decisions.

- *Use of handcuffs*: The Minister of Security and Justice is responsible for the safe implementation of all non-punitive measures. This includes the safe transport of all detainees, including foreign nationals in aliens detention. A study was carried out to explore the scope for transporting detainees without restraint measures being imposed as a standard procedure. Its findings resulted in changes to the applicable instructions. The new basic principle is to refrain from using handcuffs unless the official authorized to assess the situation believes that there is a security risk.

- *Use of strip searches*: To ensure the humane treatment of aliens, personnel will be as restrained as possible in relation to searches, strip searches and body cavity searches. Searches will be conducted in the least intrusive manner possible, taking into account the circumstances of the case. Aliens detention institutions will be using body scanners from 2014 onwards. These changes are being introduced with a view to minimizing physical contact between aliens and institution staff, which aliens frequently experience as humiliating.

84. The old search methods, that is, without the body scanner, will be discontinued aside from a few exceptional cases: in the extremely rare cases in which the body scanner is unavailable at a location (for instance because repairs are being carried out), body searches may be carried out in case of emergency. A body search will also be carried out if the alien himself states that he does not wish to undergo the body scan. Finally, a person's physical condition — pregnancy, for instance — may be a reason not to use the body scanner. In

such cases it will be necessary to weigh the need for a search, having regard to the safety of the alien and that of the other aliens in the institution as well as the staff.

85. The most invasive and drastic coercive measure, that of searching body cavities to remove prohibited objects, can be performed only if the need for it emerges from the body search or in the case of a serious threat to the alien's health. In virtually all cases, this is essentially a medical intervention to protect the person concerned. Such a procedure is carried out by a physician, or a nurse in the latter's absence, and is in practice extremely rare.

**Observance of the maximum time limit of 18 months for the administrative detention of foreign nationals awaiting expulsion or return to their country of origin (para. 15 of the concluding observations)**

86. Detention is a measure that should preferably be imposed for the shortest possible period of time. In practice, it lasts about three months in a large proportion of cases. Only if the person's removal proves problematic, which may be related to the alien's personal reaction, is this period longer. What is more, detention is imposed only in cases in which other, less drastic, measures have failed to induce the alien to leave the Netherlands of his own accord. According to the text of the EU Return Directive, the restriction of the duration of detention to 18 months refers to the measure in place at any given time; neither the text nor the purport of the EU Return Directive excludes the possibility of placing someone in detention again if an earlier detention has not led to the person's expulsion from the country.

87. It would surely make no sense if an alien's failure to cooperate or indeed his obstruction of the procedure during his detention were to have the effect of preventing his expulsion and exclude the possibility of further detention. The usefulness of detention would obviously be undermined if an alien could immediately be placed in detention again when the period of detention expires, without any change in the circumstances. Nor is this the case in the Netherlands. Such a period of renewed detention occurs only if the circumstances have changed, so that there is a fresh prospect of expulsion, or if a considerable period of time has elapsed. Any previous periods of detention are taken into account, along with any other less drastic supervisory measures that have proved ineffective, in deciding whether to impose detention. The fact that the person has previously been placed in detention and the alien's actions after release from detention are also taken into account. Virtually all cases in which it is found to be unavoidable to place the person in detention after an earlier period of detention has proved unsuccessful involve aliens who are refusing to cooperate in their departure, whereas their departure would be possible were they to cooperate.

88. It is also conceivable, in cases in which the alien has been convicted of a criminal offence, for a foreign national whose detention under administrative law has ended to be prosecuted and detained for illegal residence if article 197 of the Criminal Code applies to him. Such prosecution would be in line with the ruling of the European Court of Justice in the *Achughbabian* case (C-329/11). In circumstances such as these, the criminal court would hear the case if all available avenues in the return procedure have been exhausted, and if the alien remains within the territory without justified grounds.

89. For these reasons, the Government does not recognize the validity of the concerns raised by the Committee and is of the opinion that the figures cited in the concluding observations (30 per cent) fail to do justice to the complexity of the situation.

90. Finally, the Government wishes to draw the attention of the Committee to the existing procedural safeguards. Pursuant to sections 94 and 96 of the Aliens Act 2000, aliens may file an application for judicial review of the extension of the measure at any

time. The number of applications for judicial review that can be filed is unlimited and it is possible for the alien to file a new application for judicial review immediately after the court ruling (or even before it).

91. On the basis of section 94 of the Aliens Act 2000, the Minister of Justice informs the court of an alien's detention within four weeks, unless the alien lodges an application for judicial review before then. Once the court has received this notification, the alien is deemed to have lodged an application for judicial review of his or her detention. In the limited number of cases in which the detention exceeds six months, a second notification will be sent. In most cases, however, the alien will have already lodged an application for judicial review before then (through his or her legal counsel).

92. Within two weeks after the notification or the alien's application for judicial review, the court will schedule a hearing and will deliver judgment no later than seven days after the hearing has been concluded. If the court rules that the detention is unlawful, the detention order will be revoked, or a change will be ordered to the manner of its enforcement.

93. The costs of the alien's legal counsel are always paid by the Government of the Netherlands. This also applies in the case of repeated applications for review.

**Aliens detention of unaccompanied minor asylum seekers and families with children (para. 17 of the concluding observations)**

94. Families with children are in principle placed in special family units. By letter of 13 September 2013 the policy on detention was changed. Families with minor children are no longer placed in detention unless the parents have previously evaded supervision. If detention is imposed in such cases, the reasons for this decision must be given and the detention may last for fourteen days at most. Those concerned are placed in the designated facility of Rotterdam detention centre. Two hundred families with minor children were held in aliens detention in 2012. These families included a total of 350 minors. The average duration of these minors' stay at the facility was eight days. Children are not separated from their parents there, unless one of the parents is placed in detention as a precautionary measure. This measure too is applied with restraint, and the other parent and the children have visiting rights. In 2011 further changes were made to the policy of placing unaccompanied alien minors in aliens detention. The essence of this new policy is that the utmost restraint is exercised in placing unaccompanied alien minors in aliens detention. Detention may be imposed only in the most exceptional cases and for the shortest possible duration. Unaccompanied alien minors can be placed in aliens detention only where the Government has a compelling interest in fully guaranteeing that the minor is available for all steps concerning his or her removal from the country. One or more of the following conditions must apply: (a) the unaccompanied alien minor is suspected of, or has been convicted of, an offence; (b) the unaccompanied alien minor's departure from the Netherlands can be achieved within fourteen days; (c) the unaccompanied alien minor has previously absconded from the reception centre to an unknown destination or has failed to comply with an obligation to report to the authorities or a measure restricting his/her liberty; or (d) the unaccompanied alien minor has been refused admission at the external border, and it has not yet been established that the person is indeed a minor. Since this new approach was introduced, there has been a sharp fall in the number of unaccompanied alien minors placed in aliens detention. In 2010 some 220 unaccompanied alien minors were placed in aliens detention; under the new policy the number dropped to 90 in 2011, and then to 50 in 2012 and 30 in 2013. The average period of time spent by an unaccompanied alien minor in aliens detention is approximately 50 days. Those concerned are detained in young offenders' institutions. If their departure from the Netherlands can be achieved within fourteen days, they are in principle placed in a detention centre. This applied to

about 20 unaccompanied minors in 2011. For unaccompanied alien minors without a criminal record, this period of detention does not exceed fourteen days. In practice, the average period of detention for this group was approximately four days in 2011 and approximately six days in 2012. This is well below the maximum period of fourteen days.

**Removals and forced returns**

95. The removal and forced return of aliens by the Netherlands was monitored over the past seven years by an independent monitoring committee (the Repatriation Supervisory Committee). The Committee monitored the use of restraints during forced returns, in accordance with the EU's Return Directive and the principles of the Guidelines on Forced Return. The Repatriation Supervisory Committee reported its findings to the authorities annually. Its reports did not contain any reference to incidents involving the excessive use of restraints. On the contrary, the Committee has stated that personnel responsible for carrying out the task of forced return display great professionalism and act with empathy towards the deportees. Since 1 January 2014, the Security and Justice Inspectorate has assumed responsibility for the tasks previously carried out by the Repatriation Supervisory Committee.

96. Any complaint about the excessive use of restraints during forced return or any other complaint about the personnel carrying out the task of forced return can be submitted to the National Ombudsman, an independent non-governmental organization with the power to investigate complaints. No recent cases are known in which personnel carrying out the task of forced return were found to have made any excessive use of restraints.

## Forced internment in mental health care (recommendation 21)

97. The decline in the use of seclusion in the Netherlands has continued over the past few years. Multidisciplinary guidelines on compulsion and restraint are being developed (to be published at the end of 2014) and best practices are being shared in the field. For instance, High/Intensive Care units are being developed, which are destined to replace the current seclusion units. In April 2013 guidelines were issued setting professional standards on the use of seclusion in mental health care services ("Vrijheidsbeperking in de GGZ: veldnorm insluiting"). They include requirements that must be met by seclusion rooms, and best practices that can help to create the right conditions for effective delivery of seclusion.

98. In addition, the Healthcare Inspectorate monitors institutions closely for compliance with the assessment framework on reducing seclusion, which sets four minimum standards:

- Prevention of seclusion: has every effort been made to avoid seclusion?
- Registration of seclusion in accordance with the Argus dataset;[1] Argus is a minimum system for the collection of data on the use of the most common interventions restricting liberty in mental health care. In the Argus dataset, seclusion, isolation, restraint and the use of parenteral medication, liquids and food administered to the patient in spite of the patient's physical resistance, are all registered, regardless of the patient's legal status.
- Seclusion must not amount to solitary confinement.
- There must be a consultation system in any seclusion that lasts longer than one week. The longer the seclusion lasts, the more these obligatory consultations are intensified.

99. In its monitoring task, the inspectorate draws on information such as reports received from care providers, manufacturers and private individuals. Incidents, emergencies, abuses and structural shortcomings that are reported to the Healthcare

Inspectorate play an important role in the monitoring by the Inspectorate. The inspectorate does not investigate all the reports it receives. In response to some reports it takes enforcement measures. In exceptional cases, such as very serious situations involving an extremely high risk, the inspectorate carries out its own investigation in response to a report.

100. The Psychiatric Hospitals (Committals) Act (BOPZ Act) (as indeed the Compulsory Mental Health Care Bill) includes a complaints procedure. The complaints committees deal with complaints about issues such as restrictions on liberty, compulsory treatment and isolation. If their complaint is judged to be well-founded, patients seeking compensation under the BOPZ Act must apply to the civil court. This no longer applies under the Compulsory Mental Health Care Bill, which will enable the patient to submit a claim for compensation directly to the complaints committee.

101. Since 1 January 2012, mental healthcare institutions have been obliged to register measures restricting patients' liberty in the Argus dataset, providing a clear picture of the use of measures restricting liberty in mental health care.

Table 14
**Instances of the use of compulsion in mental health care (including addiction care)**

| | *2010* | *2011* | *2012* |
|---|---|---|---|
| Seclusion | 918 | 766 | 683 |
| Isolation | 287 | 286 | 265 |
| Restraint | 88 | 94 | 75 |
| Medication | 1 162 | 1 169 | 1 139 |
| Foods & liquids | 30 | 48 | 52 |

*Source*: BOPZis database.

102. The above table shows the number of times that compulsory care was applied in the years 2010, 2011, and 2012. This information was recorded on the reference date of 1 November 2013. In other words, it gives a record of the number of cases of compulsory care that were known to the Healthcare Inspectorate at that time.

103. In June 2010 the new Compulsory Mental Health Care Bill, which is to replace the current BOPZ Act, was introduced in the House of Representatives.

104. Among other things, the new Bill seeks to strengthen patients' legal status, to raise the quality of compulsory care and intensify scrutiny, but above all to prevent compulsion and limit the duration and severity of compulsory measures. The Bill strengthens patients' legal status in the following ways:

(a) By ensuring that decisions are prepared with greater care:

- Taking account of the patient's preferences.
- Involving the patient's family and close friends.
- Taking account of the patient's prospects for participation in society.

(b) By allowing institutions to draw up their own plans of action to prevent compulsory care.

(c) By allowing for the possibility of appeal.

(d) By involving the patient's confidential adviser and legal counsel at an earlier stage of the procedure.

(c) By ensuring that all forms of compulsory care are sanctioned in advance by the court.

105. The emphasis is on the principle that compulsory care should only be applied as a last resort, and that by building in obligatory moments for evaluating it, its duration can be minimized. In addition, compulsory care must adhere to set guidelines. The reduction of compulsion will also be made possible by ensuring that the focus is no longer on admission to a facility but on treatment, which may also be provided on an outpatient basis. All forms of compulsory care, including care provided in the community, must be included in a compulsory care order issued by a court. The possibility of including outpatient care in a compulsory care order is expected to allow less drastic interventions to be applied at an earlier stage, which will prevent the individual's mental health from deteriorating to the extent that a more drastic form of compulsory care or a crisis measure becomes necessary.

106. On 30 September 2013 the Bill was amended by a memorandum of amendment. It is expected to be debated in the House of Representatives in the autumn of 2014.

# Annex to the information received by the Netherlands on follow-up to the concluding observations

**Custodial Institutions Agency in figures: Highlights for 2013**[a]

1. The prison system is responsible for some 10,500 prisoners every day. In 2013 the average adult prisoner spent 105 days in detention: 54 per cent are released within a month; 39 per cent remain in detention for a period of between one and twelve months; 7 per cent for more than a year; and 38 prisoners are serving life sentences without the possibility of parole. The average age of adult prisoners is 35.

2. Over 500 young people are detained in institutions for an average of four months; over 1,700 persons subject to a hospital order remain in institutions for an average of 9.3 years; and about 650 aliens are detained in institutions for an average of 2.5 months.

3. Each year, 45,000 new persons enter the justice system (minors and adults, including those who have been convicted and those who have not, adults in need of psychiatric treatment or care, and aliens who are in the country illegally or who have been refused admission at the border). On an average day there are 13,500 persons in detention in some part of the justice system, of whom 95 per cent are male and 5 per cent female.

4. When adult prisoners are classified by country of birth, the following percentages emerge: the Netherlands in Europe 56.3 per cent; the Netherlands in the Caribbean (formerly the Netherlands Antilles) 7.1 per cent; Suriname 6.4 per cent; Morocco 4.8 per cent; Turkey 2.7 per cent; other countries 22.7 per cent.

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[a] Source: "Dit is DJI" (This is the DJI), Custodial Institutions Agency, April 2014, which may be consulted (in Dutch) at www.dji.nl/Images/ditisdjiapr2014_tcm93-546866.PDF.